

STATE OF HAWAII  
HAWAII LABOR RELATIONS BOARD

In the Matter of	)	CASE NO. OSH 2004-2
	)	
DIRECTOR, DEPARTMENT OF LABOR	)	ORDER NO. 88
AND INDUSTRIAL RELATIONS,	)	
	)	PRETRIAL ORDER
Complainant,	)	
	)	
vs.	)	
	)	
COLOR DYNAMICS, INC.,	)	
	)	
Respondent.	)	
_____	)	

PRETRIAL ORDER

Pursuant to representations by respective counsel for the parties at an initial conference held by the Hawaii Labor Relations Board (Board) on February 19, 2004, IT IS HEREBY ORDERED THAT:

1. The issues to be determined are:
  - (a) Whether Respondent violated 29 CFR 1926.451(g)(3) as described in Citation 1, Item 1, issued on January 14, 2004?
    - (i) Whether Respondent's employees were exposed; whether Respondent knew or should have known of the exposure with due diligence; and whether Respondent's compliance was feasible. Respondent raises the affirmative defense of unpreventable employee misconduct.
    - (ii) Whether the characterization of the violation as "repeat" is appropriate? If not, what is the appropriate characterization?
    - (iii) Whether the imposition and amount of the \$6,000.00 penalty is appropriate? If not, what is the appropriate penalty?
  - (b) Whether Respondent violated 29 CFR 1926.451(d)(5)(iii) as described in Citation 2, Item 1, issued on January 14, 2004?

- (i) Whether Respondent's employees were exposed; whether Respondent knew or should have known of the exposure with due diligence; and whether Respondent's compliance was feasible. Respondent raises the affirmative defense of unpreventable employee misconduct.
  - (ii) Whether the characterization of the violation as "serious" is appropriate? If not, what is the appropriate characterization?
  - (iii) Whether the imposition and amount of the \$3,000.00 penalty is appropriate? If not, what is the appropriate penalty?
  - (iv) Whether Citation Item 2, Item 1 is duplicative?
- (c) Whether Respondent violated 29 CFR 1926.451(f)(1) as described in Citation 2, Item 2, issued on January 14, 2004?
  - (i) Whether Respondent's employees were exposed; whether Respondent knew or should have known of the exposure with due diligence; and whether Respondent's compliance was feasible. Respondent raises the affirmative defense of unpreventable employee misconduct.
  - (ii) Whether the characterization of the violation as "serious" is appropriate? If not, what is the appropriate characterization?
  - (iii) Whether the imposition and amount of the \$3,000.00 penalty is appropriate? If not, what is the appropriate penalty?
  - (iv) Whether Citation 2, Item 2 is duplicative?
- (d) Whether Respondent violated 29 CFR 1926.451(f)(3) as described in Citation 2, Item 3, issued on January 14, 2004?
  - (i) Whether Respondent's employees were exposed; whether Respondent knew or should have known of the exposure with due diligence; and whether Respondent's compliance was feasible. Respondent raises the affirmative defense of unpreventable employee misconduct.
  - (ii) Whether the characterization of the violation as "serious" is appropriate? If not, what is the appropriate characterization?

- (iii) Whether the imposition and amount of the \$3,000.00 penalty is appropriate? If not, what is the appropriate penalty?
  - (iv) Whether Citation 2, Item 3 is duplicative?
- 2. Trial is scheduled on June 28, 2004 at 9:30 a.m. in the Board's hearing room, Room 434, 830 Punchbowl Street, Honolulu, Hawaii.
- 3. Discovery deadlines are:  
  
List of unnamed witnesses                      May 21, 2004  
  
Discovery cut-off and final  
live witness identification                      June 18, 2004
- 4. Hereafter, this Pretrial Order shall control the course of proceedings and may not be amended except by consent of the parties and the Board, or by order of the Board.

DATED: Honolulu, Hawaii, February 23, 2004.

HAWAII LABOR RELATIONS BOARD

  
BRIAN K. NAKAMURA, Chair

  
CHESTER C. KUNITAKE, Member

  
KATHLEEN RACUYA-MARKRICH, Member

NOTICE TO EMPLOYER

You are required to post a copy of this Order at or near where citations under the Hawaii Occupational Safety and Health Law are posted at least five working days prior to the trial date. Further, you are required to furnish a copy of this Order to a duly recognized representative of the employees at least five working days prior to the trial date.

Copies sent to:  
Jeffrey S. Harris, Esq.  
Robyn M. Kuwabe, Deputy Attorney General